

No. 12494

United States
Court of Appeals
for the Ninth Circuit.

F. E. LEITNER, also known as S. F. Leitner, also
known as Frederick Leitner, RAPHAEL
PORTA and WILLIAM E. BARDEN,

Appellants,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record

Appeal from the United States District Court,
Northern District of California,
Southern Division.

FILED

APR - 5 1950

PAUL P. O'BRIEN,
CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

JOHN F. O'SULLIVAN,

1500 Central Tower,
San Francisco, California.

Attorney for Defendants and Appellants.

SIDNEY FEINBERG,

WILLIAM B. SPOHN,

180 New Montgomery Street,
San Francisco, California.

Attorneys for Plaintiff and Appellee.

United States District Court for the Northern
District of California, Southern Division

No. 28814-E

UNITED STATES OF AMERICA,

Plaintiff,

vs.

F. F. LEITNER, aka S. F. LEITNER, aka FRED-
ERICK LEITNER, RAPHAEL PORTA and
WILLIAM E. BARDEN,

Defendants.

FIRST AMENDED COMPLAINT FOR
INJUNCTION AND RESTITUTION

Count I.

1. In the judgment of the Housing Expediter, the defendants have engaged in acts and practices, which constitute violations of Section 206(a) of the Housing and Rent Act of 1947, as amended (Public Law 31, 81st Congress, 1st Session).

2. Jurisdiction of this action is conferred upon this Court by Sections 206(b) and 206(c) of said Housing and Rent Act of 1947, as amended.

3. At all times mentioned herein defendants were the landlords of and rented certain controlled housing accommodations located within the San Francisco Bay Defense-Rental Area, and more particularly described as 1760-A Filbert Street, San Francisco, California, lower or front flat.

4. Since July 1, 1947, there has been in full force

and effect pursuant to said Housing and Rent Act of 1947, as amended, the Rent Regulations issued pursuant to said Act, establishing a maximum rental for the use and occupancy of housing and rental accommodations within the defense-rental area in which the premises referred to in Paragraph 3 of Count I above are located.

5. Since July 1, 1947, defendants demanded, accepted or received from tenants occupying the premises described in Paragraph 3 of Count I above, rentals in excess of the lawful rental permitted by said Rent Regulations, as appears more fully in Item 1 of the Schedule marked Exhibit "A" attached hereto and by reference incorporated herein.

6. Since July 1, 1947, defendants demanded, accepted or received as rent for other terms of occupancy or from other tenants or for other premises rentals in excess of the lawful maximum permitted by said Rent Regulations, the terms of which occupancy or the name of which tenants or the premises involved being presently unknown to the Plaintiff.

Wherefore, the Plaintiff demands and prays:

1. That an injunction be issued enjoining the defendants, their attorneys, agents, servants, and employees and all other persons in active concert or participation with the defendants from directly or indirectly demanding, accepting or receiving rents in excess of the maximum rents established by any Regulation or Order heretofore or hereafter adopted, pursuant to the Housing and Rent Act of

1947, as heretofore or hereafter amended, or extended, or superseded, or from engaging in any acts and practices which constitute or will constitute a violation of any of the provisions of the Housing and Rent Act of 1947, as amended, or extended, or superseded, or of the Rent Regulations issued pursuant thereto.

2. That the defendants be ordered and directed to pay to the Treasurer of the United States, for and on behalf of all persons entitled thereto, a refund of all amounts in excess of the lawful maximum rents which have been or may be demanded, accepted or received by the defendants from any tenants for or in connection with the use or occupancy of the housing accommodations hereinbefore described; or, in the alternative, that the defendants be ordered and directed to pay the amounts in excess of the lawful maximum rents as hereinabove prayed to the Treasurer of the United States.

3. That such other, different or further relief to which Plaintiff may be entitled be granted, or other relief be accorded, which the Court may find necessary to effectuate the purposes of the said Act as now existing, or hereafter amended or superseded, and of any orders or regulations issued thereunder.

4. That Plaintiff recover the costs of this action.

Dated this 5th day of May 1949.

/s/ SIDNEY FEINBERG,
Attorney, Office of the
Housing Expediter.

EXHIBIT "A"

R-VIII-603
(3-49)

Schedule

Item	Tenant	Unit	Date Rented	Rent Collected	Maximum Legal Rent	No. of Overcharges	Amt. of Each Overcharge	Overcharge to Each Tenant
1	Mr. & Mrs. Herald Hawkins	1760-A Filbert Street San Francisco, Calif. Lower or front flat	Jan. 1, 1948 to Apr. 1, 1949	\$65.00 per mo.	\$25.00 per mo.	15	\$40.00	\$600.00

United States of America

[Endorsed]: Filed May 6, 1949.

[Title of District Court and Cause.]

ANSWER TO FIRST AMENDED COMPLAINT
FOR INJUNCTION AND RESTITUTION

Come now defendants above named and answering the complaint of plaintiff above named admit, deny and aver as follows:

I.

Answering the allegations contained in paragraphs I, II, III, IV, V and VI of said complaint these defendants deny each, every, all and singular the allegations therein contained.

II.

As and for a separate, second and further defense to the matters and things set forth in plaintiff's complaint, defendants aver that Henry Cross is and was at all of the times herein and in said complaint mentioned the duly appointed, qualified and acting Rent Director for the San Francisco Bay Defense Rent Area, duly appointed as such by Tighe E. Woods, United States Housing Expediter under and by virtue of the authority vested in him by the Housing and Rent Acts of 1947 and 1948 and amendments thereto, being Title 54, Appendix 94 United States Code; that at all of the times herein mentioned, defendants have been and now are the owners of that real property with the improvements thereon known and designated as 1760-1770 Filbert Street in the City and County of San Francisco,

State of California; that apartment 1760-A Filbert Street is and was at all of the times herein mentioned an apartment located in said real property and improvements thereon.

III.

Defendants further allege that said apartment 1760-A formerly designated and described as apartment 1760 Filbert Street, was occupied from March, 1942 to and through July 12th, 1947, by an employee of the then owner of said apartment house, and the name of said employee was one E. G. Leres; that said apartment 1760-A Filbert Street, San Francisco, California, was occupied by said E. G. Leres as a servant, caretaker and manager of the then owner of said apartment house and of the defendants herein when they acquired title to said property, as all of his compensation for services rendered as such servant, caretaker and manager and the said E. G. Leres was employed for the purpose of rendering services in connection with the said premises designated as 1760-1770 Filbert Street, San Francisco, California, and that said apartment 1760-A was at all of the times herein mentioned and now is a part of said apartment house; that thereafter and on or about the 13th day of July, 1947, S. F. Leitner, one of the defendants herein occupied said apartment 1760-A Filbert Street, San Francisco, California, and continued to occupy said apartment to and including the 26th day of December, 1947; that thereafter and on or about the 27th day of

December, 1947, defendants herein rented said apartment 1760-A Filbert Street, San Francisco, California, to M. B. Hawkins and he has occupied said apartment as a tenant of defendants ever since said date and now does occupy said apartment as a tenant of defendants herein.

IV.

That the said defendants herein did not at any time since they became owners of the said real property and the owner preceding the defendants herein, one Leo Marchetta who owned said property at all of the times herein prior to the time that defendants acquired the same did not at any of the times herein mentioned, that is to say, from the 1st day of January, 1942, to the time that he sold the said real property to the defendants herein register the said property with the Office of Price Administration or with the Henry A. Cross, as San Francisco Bay Area Defense Rent Area Director as a housing accommodations or as a rental unit, subject to the Emergency Price Control Act or the Housing and Rent Acts of 1947 and 1948 or at all; that by reason of the foregoing, said apartment 1760-A Filbert Street, San Francisco, California, was not subject to the Rent Control Provisions of the Rent Acts of 1947 and 1948 and was expressly exempted from the application of said Acts by Section 1, Subdivision b(ii) of Regulation 825 of the United States Housing Expediter; that Henry A. Cross, as San Francisco Bay Area Defense Rent Area Director, in a

letter to Mr. William Barden, one of the defendants herein expressly admitted that said apartment 1760-A Filbert Street, San Francisco, California, was a dwelling unit which was in existence on February 1, 1945, and which at no time during the period February 1, 1945, to January 31, 1947, both dates inclusive, was rented (other than to members of the immediate family of the occupant) as housing accommodations and therefore decontrolled under the provisions of the Rent Act of 1947 and not subject to the maximum rental provisions of said Rent Act of 1947 and not subject to the control of Henry A. Cross as San Francisco Bay Area Defense Rent Area Director.

Wherefore, defendants pray that the said plaintiff take nothing by reason of its complaint herein and that defendants be hence dismissed with costs of suit.

/s/ JOHN F. O'SULLIVAN,
Attorney for Defendants.

Receipt of copy acknowledged.

[Endorsed]: Filed July 1, 1949.

[Title of District Court and Cause.]

PLAINTIFF'S REQUEST FOR ADMISSIONS
PLAINTIFF'S INTERROGATORIES

To: John F. O'Sullivan, Esquire, Attorney at Law,
1500 Central Tower, San Francisco, California.

For the purpose of this action only, pursuant to

the provisions of Rule 36, as amended, of the Federal Rules of Civil Procedure, plaintiff requests the defendants to admit the genuineness of the documents described and exhibited herewith, if any, to admit the truth of the following relevant matters of fact.

1. That at all times material to this action defendants were the landlords of certain controlled housing accommodations, more particularly described and set forth in Schedule A attached to Plaintiff's First Amended Complaint, which schedule is by reference incorporated herein.

2. That the items in said schedule truthfully and correctly designate the name of the tenant who occupied the designated housing accommodations.

3. That the items in said schedule truthfully and correctly designate the periods said tenant occupied said accommodations.

4. That the items in said Schedule A truthfully and correctly designate the rentals collected from said tenant.

5. That said schedule truthfully and correctly designates the registered legal rents in force for the indicated housing accommodations for the periods of time referred to in request No. 3.

Interrogatories

Pursuant to the provisions of Rule 33 of the Federal Rules of Civil Procedure, as amended, Plain-

tiff addresses to the defendants F. F. Leitner, Raphael Porta and William E. Barden the following interrogatories, to be answered separately, fully, and under oath, within fifteen (15) days, if the defendants can not admit Plaintiff's Request for Admissions in their entirety:

1. State the name of the person occupying the premises designated in Exhibit A attached to Plaintiff's within and foregoing Complaint.

2. What was the period of said tenant's occupancy?

3. Was the occupancy on a weekly or monthly basis?

4. How much rent was collected for said tenant's occupancy of the designated housing accommodations per week or month as designated in Interrogatory No. 3?

5. If the defendants do not admit the basic registered maximum rent as set out in the aforementioned Exhibit A to Plaintiff's Complaint, state what the defendants claim the legal maximum rent to be and upon what facts said claim is based.

Dated this 29th day of July, 1949.

/s/ SIDNEY FEINBERG,
Attorney for Plaintiff.

Affidavit of service by mail attached.

[Endorsed]: Filed August 3, 1949.

[Title of District Court and Cause.]

DEFENDANT'S ADMISSION OF CERTAIN
FACTS REQUESTED BY PLAINTIFF —
DENIAL OF THE TRUTH OF CERTAIN
FACTS REQUESTED BY PLAINTIFF —
AND ANSWER TO PLAINTIFF'S INTER-
ROGATORIES

In compliance with the demand of plaintiff herein, defendants admit or deny requested admissions as follows and answer plaintiff's interrogatories as follows:

I.

Referring to the demand for admission contained in heading No. 1 of plaintiff's request for admission, defendants aver that they became the owners of the real property which is the subject of this action on or about the 21st day of April, 1947, ever since have been and now are the owners in fee simple of said real property; defendants deny that the premises, the subject of this action, were at any time mentioned in plaintiff's complaint controlled housing accommodations and aver that said premises were not at any time subject to control by the Housing Expediter, under the laws of the United States of America, or at all.

II.

Answering plaintiff's second request for admission these defendants aver that apartment 1760-A Fil-

bert Street, San Francisco, California, was rented by defendants to Mr. and Mrs. Harold Hawkins on or about the 27th day of December, 1947 and that said Mr. and Mrs. Harold Hawkins ever since said date have occupied by said apartment and do now occupy said apartment as said tenants of said defendants; save as admitted herein in this paragraph said defendants deny that the items in said schedule truthfully and correctly designate the name of the tenant who occupied the designated housing accommodations.

III.

These defendants admit the matters set forth in paragraph No. 3 of plaintiff's request for admissions.

IV.

These defendants admit that \$65.00 per month up to and including February, 1949; otherwise these defendants deny that said schedule A truthfully and correctly designate the rent collected from said tenant.

V.

Answering the request for admission contained in paragraph No. 5 of said plaintiff's request for admission these defendants deny that said schedule truthfully and/or correctly designates the registered legal rents in force for the indicated housing accom-

modations for the periods of time referred to in request No. 3.

VI.

Answering interrogatory No. 1, defendants assume that said interrogatory is directed toward the name of the person now occupying the premises known and designated in Exhibit A attached to plaintiff's complaint. With this assumption, defendants answer that the name of the person or persons now occupying said premises are Mr. and Mrs. Harold Hawkins.

VII.

Answering interrogatory No. 2 said tenants commenced their occupancy of the said premises on the 27th day of December, 1947, and ever since have occupied said premises.

VIII.

Answering interrogatory No. 3, said occupancy was on a monthly basis.

IX.

Answering interrogatory No. 4, \$65.00 per month on a monthly basis was collected from said tenants from the 27th day of December, 1947, to and including the month of February, 1949; no rent has been collected from said tenants since said time.

X.

Answering interrogatory No. 5, defendants claim that there was no legal maximum rent during the

occupancy of said tenants from the commencement of his occupancy until the enactment of the Rent Control Act of 1949; the facts upon which said claim is based are fully set forth in defendants' answer to plaintiff's complaint and reference is hereby made thereto.

XI.

These admissions, denials and answer to interrogatories are made by William E. Barden, one of the defendants herein on behalf of all of the defendants for the reason that all of the defendants are associated together and the ownership, management and operation of the property involved herein and as such constitute an association within the meaning of the rules of Civil Procedure.

/s/ WILLIAM E. BARDEN,
For Defendants.

State of California,
City and County of San Francisco—ss.

William E. Barden, being first duly sworn, deposes and says:

That he is one of the defendants in the above entitled action; that he has read the foregoing admissions, denials and answer and knows the contents thereof; that the same is true of his own knowledge, except as to the matters which are

therein stated on information and belief and as to those matters that he believes it to be true.

/s/ WILLIAM E. BARDEN.

Subscribed and sworn to before me this 19th day of August, 1949.

[Seal] /s/ GUSTAVE RICHMAN,
Notary Public in and for the City and County of
San Francisco, State of California.

Receipt of copy acknowledged.

[Endorsed]: Filed August 23, 1949.

PLAINTIFF'S INTERROGATORIES AND ANSWERS TO PLAINTIFF'S INTERROGATORIES

Interrogatory No. 1

State the name of the person occupying the premises designated in Exhibit A attached to Plaintiff's within and foregoing Complaint.

Answer to Interrogatory No. 1

Defendants assume that said interrogatory is directed toward the name of the person now occupying the premises known and designated in Exhibit A attached to plaintiff's complaint. With this assumption, defendants answer that the name of the person or persons now occupying said premises are Mr. and Mrs. Harold Hawkins.

Interrogatory No. 2

What was the period of said tenant's occupancy?

Answer to Interrogatory No. 2

Said tenants commenced their occupancy of the said premises on the 27th day of December, 1947, and ever since have occupied said premises.

Interrogatory No. 3

Was the occupancy on a weekly or monthly basis?

Answer to Interrogatory No. 3

Said occupancy was on a monthly basis.

Interrogatory No. 4

How much rent was collected for said tenant's occupancy of the designated housing accommodations per week or month as designated in Interrogatory No. 3?

Answer to Interrogatory No. 4

\$65.00 per month on a monthly basis was collected from said tenants from the 27th day of December, 1947, to and including the month of February, 1949; no rent has been collected from said tenants since said time.

Interrogatory No. 5

If the defendants do not admit the basic registered maximum rent as set out in the aforementioned Exhibit A to Plaintiff's Complaint, state what the defendants claim the legal maximum rent to be and upon what facts said claim is based.

Answer to Interrogatory No. 5

Defendants claim that there was no legal maximum rent during the occupancy of said tenants from the commencement of his occupancy until the enactment of the Rent Control Act of 1949; the facts upon which said claim is based are fully set forth in defendants' answer to plaintiff's complaint and reference is hereby made thereto.

(Plaintiff's Interrogatories Filed Aug. 3, 1949, Answers to Plaintiff's Interrogatories Filed Aug. 23, 1949.)

[Title of District Court and Cause.]

INTERROGATORIES PROPOUNDED TO
PLAINTIFF BY DEFENDANTS HEREIN

Defendants above named herewith propound the following interrogatories to plaintiff herein under Rule 33 of the Federal Rules of Civil Procedure as amended and herewith demand that said plaintiff answer said interrogatories within fifteen (15) days after the service of the interrogatories upon said plaintiff.

Said interrogatories are as follows:

Interrogatory No. 1: State what acts and/or practices defendants have engaged in which, in the judgment of the Housing Expediter or the Rent Director for San Francisco, constitute or constituted violations of Sections 206(a) of the Housing and Rent Act of 1947 as amended.

Interrogatory No. 2: Give the date or dates of each and all of the acts and practices mentioned in paragraph I of the complaint.

Interrogatory No. 3: State how, or in what manner, each of said acts or practices violates said Section 206(a) of the Housing and Rent Act of 1947 as amended.

Interrogatory No. 4: State in full all evidence relied upon or submitted to the Housing Expediter or Rent Director upon which the said Housing Expediter or Rent Director based his judgment that defendants have engaged in acts and practices constituting a violation of said Section 206(a) of the Housing and Rent Act of 1947 as amended.

Interrogatory No. 5: Give the name or names of each and every person submitting evidence mentioned in Interrogatory No. 5, and state whether such evidence is written or oral—if evidence is written attach copies of all written evidence submitted.

Interrogatory No. 6: State all facts submitted to the Housing Expediter or Rent Director upon which the said Housing Expediter or Rent Director considers the premises at 1760-A Filbert Street, as having been controlled.

Interrogatory No. 7: State when, in the judgment of the Housing Expediter or Rent Director, said premises at 1760-A Filbert Street became controlled and the reasons therefor and state also how long in the judgment of said Housing Expediter or

Rent Director the said premises 1760-A Filbert Street continued to be controlled and whether or not it has ever been decontrolled and not subject to the Rent Regulations or the Housing and Rent Act of 1947.

Interrogatory No. 8: State in detail all evidence which according to notice to landlord of proceedings to determine the maximum rent, evidence has been presented to this office showing that the premises were rented on March 1, 1942, at a rental of \$25.00 per month unfurnished with cold water provided; give the evidence upon which said statement was based in detail, stating whether it was oral or written, stating by whom the same was submitted, when the same was submitted, the names and addresses of the person or persons submitting and if written attach copies of such evidence hereto.

Interrogatory No. 9: Give the name and address of each and every witness who has submitted any evidence herein asked to be given in answer to these interrogatories.

Defendants herewith demand that plaintiff by a sworn statement admit the following facts to be true or specifically deny that they are true, admit the truth and the genuineness of the documents herein referred to, as follows, to-wit:

I.

That on or about March 5th, 1948, Henry A. Cross, Rent Director, wrote to William E. Barden,

one of the defendants herein, stating in part as follows: "On the basis of the information submitted on this form, the unit or establishment herein described is decontrolled by the Housing and Rent Act of 1947." That said statement referred to the premises known and designated as 1760-A Filbert Street, San Francisco.

II.

That on December 22nd, 1948, Henry A. Cross, Rent Director, terminated proceedings relating to 1760-A Filbert Street, San Francisco, California, with the following notation: "Terminated Proceedings accommodations occupied previously by manager, rent to be determined under Section 825-5d."

Dated: This 19th day of August, 1949.

/s/ JOHN F. O'SULLIVAN,
Attorney for Defendants.

Receipt of copy acknowledged.

[Title of District Court and Cause.]

NOTICE OF MOTION—MOTION FOR
SUMMARY JUDGMENT

Notice of Motion

To the Above-Named Defendants and John F. O'Sullivan, Their Attorney:

You Will Please Take Notice that the undersigned will move this Court at the United States Post Office Building, San Francisco, California, on the 19th day of September, 1949, at 10:00 a.m. of said day, or as soon thereafter as counsel can be heard, for entry of Summary Judgment in this cause.

Motion for Summary Judgment

Plaintiff moves the Court that it enter, pursuant to Rule 56 of the Rules of Civil Procedure, as amended, Summary Judgment in Plaintiff's behalf and against Defendants herein.

This motion is based upon the following papers and documents heretofore filed:

(a) Plaintiff's First Amended Complaint for Injunction and Restitution.

(b) Defendants' Answer Thereto.

(c) Plaintiff's Request for Admissions and Interrogatories.

(d) Defendants' Reply Thereto.

It appears therefrom that this action was commenced by the United States of America on or about

April 27, 1949, by filing a Complaint for Injunction and Restitution with the Clerk of this Court, and that service was made upon Defendant Leitner, through his wife, by the United States Deputy Marshal on or about April 29, 1949.

It further appears that on or about May 6, 1949, Plaintiff filed a First Amended Complaint for Injunction and Restitution with the Clerk of this Court and that service was made upon the Defendants through their attorney, John F. O'Sullivan, by the United States Deputy Marshal on or about May 16, 1949.

It further appears that on July 1, 1949, Defendants filed their Answer to Plaintiff's First Amended Complaint through their aforesaid attorney.

Subsequently, on or about August 3, 1949, Plaintiff's Request for Admissions and Interrogatories were served by mail upon Defendants through their aforesaid attorney, together with a copy of an Affidavit of Service by Mail, copies of which are on file with the Clerk of this Court.

On or about August 23, 1949, Defendants by William E. Barden filed their Reply thereto entitled "Defendants' Admission of Certain Facts Requested by Plaintiff—Denial of the Truth of Certain Facts Requested by Plaintiff—and Answer to Plaintiff's Interrogatories." In their Reply, Defendants admitted all material allegations of Plaintiff's First Amended Complaint save one concerning the applicable legal maximum rent for the housing accommodations in question, as set forth in Schedule "A"

attached to said Complaint. The sole remaining issue is accordingly one of law to be determined by the Court.

Defendants contend that these housing accommodations were not subject to control under the Housing and Rent Act of 1947, relying upon a statement dated March 5, 1948, by Henry A. Cross, Area Rent Director for the San Francisco Bay Defense-Rental Area, to the effect that the accommodations were decontrolled.

That this contention of Defendants is ill-founded is shown by the attached Affidavit of said Henry A. Cross to the effect that his statement of March 5, 1948, had been based on information submitted to the Area Rent Office by Defendant Barden, which information was later shown to have been erroneous. Further, that Defendant Barden was so advised on May 5, 1948, and given an opportunity to substantiate his original statement or explain the error but did not satisfactorily do so. That accordingly, after various administrative proceedings, said Henry A. Cross on February 21, 1949, issued an order finding that the rent for the housing accommodations on the date determining the maximum rent in the San Francisco Bay Defense-Rental Area (namely March 1, 1942) was \$25 per month, unfurnished, with cold water provided, which order was made effective from July, 1947, and that the maximum rent for the accommodations has since remained unchanged. Moreover, that a careful review of the records of the Area Rent Office fails to show that the Defendants or

anyone on their behalf has taken any action to avail themselves of the provisions for administrative review of the aforesaid order of February 21, 1949.

It is the Plaintiff's position that the tenant in occupancy during the period essential for decontrol under the Housing and Rent Act of 1947—namely, February 1, 1945, to January 31, 1947, both dates inclusive—was neither in truth nor in fact the manager of the premises. As the attached Affidavit of said tenant Emanuel Leres shows, he was a rent-paying tenant from March, 1942, through July, 1947, and whatever assistance he gave the then owner of the premises was given as a matter of friendship without any remuneration.

Plaintiff moreover submits that Defendants had an adequate remedy at law, but having failed to exhaust the administrative remedies available for review of the aforesaid order of February 24, 1949, under the regulations issued pursuant to the Housing and Rent Act of 1947, cannot now challenge that order.

It is the further position of the Plaintiff that even if said Emanuel Leres were manager of the premises during the period in question, that fact would be immaterial under the Regulations and official Interpretations issued by the Housing Expediter pursuant to the Housing and Rent Act of 1947. Those Regulations and Interpretations provided that occupancy of controlled housing accommodations by a manager or other employee of the owner during the period February 1, 1945, to January 31, 1947,

both dates inclusive, did not remove such accommodations from control under the Housing and Rent Act of 1947. Such Regulations and Interpretations, tending to carry out the said Act as a whole, are controlling and binding upon the Courts unless clearly erroneous or inconsistent with the Act, which Plaintiff submits these Regulations and Interpretations are not.

Wherefore, Plaintiff prays that judgment be rendered forthwith on its behalf, as the Pleadings, Request for Admissions and Interrogatories and Reply thereto, show conclusively that there is no genuine issue remaining as to any material facts, and that the moving party is entitled to a Judgment as a matter of law, as prayed for in Plaintiff's Complaint.

Dated this 9th day of September, 1949.

/s/ WM. B. SPOHN,

Litigation Attorney, Office of
the Housing Expediter.

Affidavit of Service by Mail attached.

[Endorsed]: Filed September 9, 1949.

[Title of District Court and Cause.]

AFFIDAVIT OF HENRY A. CROSS

City and County of San Francisco,
State of California—ss.

Henry A. Cross, being first duly sworn, deposes and says:

That he is the duly appointed and acting Area Rent Director for the Office of the Housing Expediter in the San Francisco Bay Defense-Rental Area.

That in such capacity he is the custodian of all official records and documents pertaining to the controlled housing accommodations in the San Francisco Bay Defense-Rental Area.

That among the controlled housing accommodations on which he maintains official records are those located at 1760-1770 Filbert Street, San Francisco, California.

That such housing accommodations include those designated as 1760-A Filbert Street, San Francisco, California, which William E. Barden as one of the landlords declared in a "Decontrol Report for Housing Accommodations" (Form D-94) dated March 3, 1948, and filed in the Area Rent Office, were

"A dwelling unit which was in existence on February 1, 1945, and which at no time during the period February 1, 1945, to January 31, 1947, both dates inclusive, was rented (other than to members of the immediate family of the occupant) as housing accommodations."

That the affiant on March 5, 1948, advised Barden that on the basis of said information the housing accommodations in question were decontrolled by the Housing and Rent Act of 1947.

That thereafter, by letter dated May 5, 1948, affiant informed Barden that the Area Rent Office had since received a signed statement to the effect that these housing accommodations were not occupied by the landlord during the period in question but had been occupied by one Emanuel Leres and asked that Barden either substantiate his original statement or explain the error. Affiant further advised Barden that if in fact the accommodations were not decontrolled and more than the legal maximum rent were collected therefor, such collection would constitute a violation of the Housing and Rent Act.

That subsequently, Barden, on behalf of himself and F. F. Leitner and Raphael Porta as owners of the housing accommodations, submitted various information to the Area Rent Office, including a petition for adjustment of maximum rental.

That on January 25, 1949, affiant advised the said owners that on the basis of the evidence presented to the Area Rent Office, affiant proposed to enter an order establishing the legal maximum rent of the aforesaid housing accommodations at \$25.00 per month, unfurnished, with cold water provided, and informed the owners that they might within ten days file any statement or written evidence concerning the matter which they wished affiant to consider.

That on February 3, 1949, the aforesaid owners filed such a statement through their attorney, John F. O'Sullivan.

That affiant, after consideration of the entire record in the matter, concluded that said statement was insufficient to contravene the evidence of occupancy by the aforesaid Emanuel Leres and affiant accordingly, on February 21, 1949, issued an order (Docket No. J-2548-D) finding that the rent for the aforesaid housing accommodations on the date determining the maximum rent was \$25.00 per month, unfurnished, with cold water provided.

That the aforesaid order of affiant, copy of which was mailed to the owners on February 21, 1949, was made effective from July 1, 1947, and that the maximum rent for the housing accommodations in question has since remained in the same amount of \$25.00 per month, unfurnished, and with cold water provided.

That a careful review of the records of the Area Rent Office fails to show that the owners or any one on their behalf has taken any action to avail themselves of the provisions of the aforesaid Housing and Rent Act or the Regulations thereunder, for administrative review of affiant's aforesaid order of February 21, 1949.

Dated this 9th day of September, 1949.

/s/ HENRY A. CROSS,
Area Rent Director,
San Francisco Bay
Defense-Rental Area.

Subscribed and sworn to before me this 9th day of September, 1949.

/s/ [Indistinguishable]

The person whose name is subscribed above is officially designated as being authorized to administer oaths pursuant to authority of P.I. 31, 81st Congress (14 Fed. Reg. 2709).

[Endorsed]: Filed September 9, 1949.

[Title of District Court and Cause.]

AFFIDAVIT IN OPPOSITION TO MOTION
FOR SUMMARY JUDGMENT

State of California,
City and County of San Francisco—ss.

William E. Barden, being first duly sworn, deposes and says:

That he is one of the defendants in the above entitled matter and as such is familiar with all of the matters and things in this affidavit set forth.

That this affidavit is in answer to the affidavit of Henry A. Cross and the affidavit of Emmanuel G. Leres, both of which have been filed on behalf of the plaintiff in support of its motion for summary judgment in the above entitled matter.

That on the 21st day of April, 1947, affiant notified the Office of Price Administration and the Housing Expediter that the above named defendants purchased the property in which apartment

1760-A Filbert Street was and is located; that thereafter and on the 17th day of May, 1947, affiant filed with the Housing Expediter and Henry A. Cross as Rent Area Control Director a request for prior petition and a petition setting out proposed work to be done; that a prior opinion was issued and signed by said Henry A. Cross on the 20th day of May, 1947, and thereafter Ralph L. Ryan, Area Compliance Supervisor on the 29th of May, 1947, stated to affiant in the form of a letter the relationship between affiant and Emmanuel Leres was of no concern to the Office of Price Administration or to the Housing Expediter and that neither had jurisdiction over the matters relating to the relationship of said affiant as owner and the said Leres.

That Morley Goldberg, Area Rent Attorney, on June 4th, 1947, confirmed the opinion of said Mr. Ryan on the ground that Mr. Leres was acting as manager of the premises for the former owner and that therefore the Housing Expediter and the Office of Price Administration had no jurisdiction over the matter;

That in March, 1948, affiant, together with the other defendants herein, filed their petition denominated Landlords Petition for Adjustment of Rent; that this petition set forth in detail improvements which the defendants herein intended to make upon all of the apartments located at 1760-1770 Filbert Street, San Francisco, California, including the apartment, the subject of this suit, to-wit, 1760-A Filbert Street, San Francisco, California; that said

petition sought the setting of rents and an increase of rents for each and all of said apartments including said apartment 1760-A, and alleged among other things as follows:

“This apartment (1760-A) was occupied prior to January 1, 1945, to and through July 1st, 1947, by an employee of the owner, who served in the capacity of manager of the apartment, consideration of the services and of rent paid by the employee G. Leres. Leres moved out on or about July 1st, 1947, having bought his own home (G.I.), and his whereabouts are presently unknown to petitioners. Programs 2 and 3 were adopted to 1760 with this additional feature. Instead of a frigidaire (the usual 209) model we installed a Servell (gas model, now retailing at \$400.00), and installed a large Wedgwood Range. The present tenants agreed in writing to the rental of \$65.00.

This petition so far as 1760-A Filbert Street has never been acted upon.

Affiant has further submitted evidence to the said Henry A. Cross, Rent Area Director, consisting of the affidavit of Leo Marchetta, former owner, as to the status of said Emmanuel Leres, which said affidavit clearly showed that said Leres was an employee of said Leo Marchetta during all of the times mentioned from the year 1942 up to the time that said Leo Marchetta sold said property to defendants, namely, in or about April, 1947; that an original duplicate of said affidavit is hereto annexed, hereby referred to and made a part of this

affidavit; that said Leres continued to be an employee of the defendants herein under the same circumstances set forth in the affidavit of Leo Marchetta up to and including the 1st day of July, 1947; that affiant attaches herewith and makes a part hereof the original statement of Charlotte Broderick and Mrs. B. Dahl, each of which affidavits set forth in detail the work that said Leres has done as manager of the aforesaid apartment during the times in this affidavit mentioned.

That affiant and defendants herein have consistently objected to the said Henry A. Cross attempting to impose a maximum rent upon the above apartment for the reason that he had no jurisdiction to do so and that his action at all times was in contradiction to Subdivision 1 of Sub-Section b of Section I of Party 25 of the Rent Regulations under the Housing and Rent Act of 1947 and herein reiterates said position.

In this connection affiant avers that the said Emmanuel Leres was the manager of the said defendants from that the said defendants became the owners of said property up to on or about the 1st day of July, 1947, and did and performed all of the services set forth in the affidavits and statements herein referred to and attached hereto; that affiant heretofore filed a decontrol notice as required by the Office of the Housing Expediter and in accordance with the rules and regulations thereof and that said apartment was decontrolled and has been decontrolled at all of the times herein mentioned

up to and including the enactment of the present Rent Control Act of 1949. Affiant further states that the matters and things set forth in the affidavit of Emmanuel G. Leres, so far as your affiant knows, are untrue.

Wherefore, affiant prays that the motion for summary judgment be denied.

/s/ WILLIAM E. BARDEN.

Subscribed and sworn to before me this 29th day of September, 1949.

[Seal] /s/ CATHERINE T. McDONNELL,
Notary Public in and for the City and County of
San Francisco, State of California.

AFFIDAVIT

State of California,
City and County of San Francisco—ss.

Leo Marchetta, being first duly sworn, deposes and says: That from December 28, 1939, to and including the 1st day of May, 1947, affiant was the owner of those particular premises located at 1760-1770 Filbert Street, San Francisco, California. That some time in 1942, the exact date of which affiant does not remember, affiant permitted a relative of his, to-wit: Mrs. E. G. Leres, and her husband E. G. Leres, to occupy apartment Number 1760 Filbert Street under condition that they or either of the said Leres, should conduct the operation of the said

premises in the capacity of full responsibility of managership; that thereupon the said Leres persons began the occupancy of said apartment Number 1760 Filbert Street; that it was agreed between affiant and said Leres persons that in consideration of the full time as needed in the managing of said apartment being bestowed by said Leres persons, that no rental hire of said property should be demanded by affiant from Leres persons or either of them; that at said time affiant was not living upon nor occupying any apartment in said structure. That said occupancy without hire continued for a period of time well into the year of 1945; that said Leres persons exercised all functions of managership of said apartment-house 1760-1770 Filbert street; that during the year 1943, said E. G. Leres was left alone in said apartment with minor son of said Leres persons; that the duties theretofore performed by said E. G. Leres and Mrs. E. G. Leres were continued to be performed by E. G. Leres; that on or about the middle of the year 1945, on or about April 15, 1945, affiant announced to the said Mr. and Mrs. E. G. Leres that he, affiant would collect all of the rentals from the tenants on said premises, but that said Leres persons could remain as maintenance persons on said premises and in the same amount and degree of labor and services as theretofore by them performed, saving and excepting for the said collecting of rentals from tenants; that thereafter, down to and including the 18th day of April, 1947, said E. G. Leres and Mrs.

E. G. Leres, or either of them, did perform the following services as a part consideration for their use of the said apartment 1760 Filbert Street, to-wit: Supervising the light-control switch, turning off and on as the time warranted it, the light for the hall way in said apartment building for all 16 apartments; sweep hallway and steps into the Filbert Street entrance; cleaning up and maintaining clean the concourse under the back porches and to the rear or easterly side of the premises; distributing to all tenants the shopping news papers when and as delivered in a lump bundle at the door of 1760 Filbert street; make minor repairs to facilities in apartments of all tenants, not requiring major work or labor by journeymen, such as repair leaky water faucets, replace faulty washers; replace burned out globes where needed; keep supply of globes on hand to use in replacements where needed; show vacant apartments to prospective tenants; answer complaints of tenants, and attempt to work out difficulties between tenants; assist utilities men when unacquainted with tenants and their respective service meters; keep garbage cans covered and arrange for removal of garbage when unusual situation arose other than ordinary; compel the removal of noisy, boisterous persons other than tenants when they would and did congregate in foyer of apartment house, or on landings; keep rear concourse free from rubbish and clean up the same; and police up the same, allowing only those who had lawful business in any of such storeroom to visit the same;

accept on behalf of the tenants packages for the convenience of tenants when tenants were away; accept phone messages for the tenants, and call tenants to the phone when tenants had no phone of their own; said phone was in the apartment of E. G. Leres; admonish noisy and boisterous persons, tenants or guests of tenants, when noise complained of by other tenants; occasionally collected rentals from the tenants when affiant was not on the premises, and particularly when affiant was in hospital during month of October, 1946. That said Leres persons, or either of them did perform the foregoing services on behalf of affiant until the sale by affiant of the said premises to F. F. Leitner on April 18, 1947.

/s/ LEO MARCHETTA.

Subscribed and sworn to before me this 7th day of June, 1948.

[Seal] /s/ ARTHUR J. HEALY,
Court Commissioner for the Superior Court of the
State of California, in and for the City and
County of San Francisco.

Statement of Facts Concerning 1760 Filbert Street
Regarding Mr. and Mrs. Leres Prior to Pur-
chase of the Property by Mr. Leitner

The undersigned was a tenant in the apartment house at 1760-1770 Filbert Street, San Francisco, for some considerable time prior to April 18, 1947; Mr. Leo Marchetta was the owner of the property

and occupied the apartment second from the street; on many occasions, and for some periods of time he was indisposed; during his indisposition and while he was sick and was not around the premises other persons named Mr. and Mrs. E. G. Leres would substitute for him. Leres lived at 1760 Filbert St., the first lower apartment. These are some of the things the undersigned observed the Leres persons to perform during Mr. Marchetta's indisposition:

1. Leres had control of the lighting of the halls in front of all the lower apartments at the entrances.

2. Leres swept and cleaned the hallway and the steps on westerly side, that is the front of the apartments.

3. Leres cleaned the concrete concourse on the easterly (back) side of the apartment house.

4. Leres distributed the "Shopping News" to the several apartments; the papers were left in a bundle at Leres apartment by the delivery boy, and then distributed by Leres.

5. Leres repaired leaky faucets, and did minor details around apartments, such as replacing faulty washers, etc.

6. Leres replaced burned-out globes, in halls and apartments.

7. Leres answered complaints of tenants, and spoke to visitors when they came onto the hallway.

8. Leres kept the garbage-disposal containers covered.

9. Leres determined who were undesirable persons who came upon the premises and compelled them to depart; this particularly as to children who otherwise would use the hallway for a playground.

10. Leres supervised entrance and egress from the storerooms, letting tenants in and out of the same, and saying what, when and how things could be stored therein.

11. Leres accepted packages from delivery boys on behalf of tenants who may have been absent, and delivered them (the packages) to the tenants upon their return.

12. Leres had a phone in his apartment; other tenants were not able to have a phone installed, or did not care to do so, and Leres would accept a message for the tenant, and would either relay it to the tenant, or would call the tenant to the phone in Leres apartment.

13. When keys would be lost, Leres would see to it that substitute keys would be had.

14. When Marchetta was in hospital, Leres collected the rent money from tenants on behalf of Marchetta.

The foregoing statements of fact are calculated to indicate that either Mr. or Mrs. Leres occupied a position of trust in so far as Mr. Marchetta is

concerned and performed some of the duties of manager of the whole apartment house.

/s/ CHARLOTTE BRODERICK,
Tenant.

Statement of Facts Concerning 1760 Filbert Street
Regarding Mr. and Mrs. Leres Prior to Purchase of the Property by Mr. Leitner

The undersigned was a tenant in the apartment house at 1760-1770 Filbert Street, San Francisco, for some considerable time prior to April 18, 1947; Mr. Leo Marchetta was the owner of the property and occupied the apartment second from the street; on many occasions, and for some periods of time he was indisposed; during his indisposition and while he was sick and was not around the premises other persons named Mr. and Mrs. E. G. Leres would substitute for him. Leres lived at 1760 Filbert St., the first lower apartment. These are some of the things the undersigned observed the Leres persons to perform during Mr. Marchetta's indisposition:

1. Leres had control of the lighting of the halls in front of all the lower apartments at the entrances.

2. Leres swept and cleaned the hallway and the steps on westerly side, that is the front of the apartments.

3. Leres cleaned the concrete concourse on the easterly (back) side of the apartment house.

4. Leres distributed the "Shopping News" to the several apartments; the papers were left in a

bundle at Leres apartment by the delivery boy, and then distributed by Leres.

5. Leres repaired leaky faucets, and did minor details around apartments, such as replacing faulty washers, etc.

6. Leres replaced burned-out globes, in halls and apartments.

7. Leres answered complaints of tenants, and spoke to visitors when they came onto the hallway.

8. Leres kept the garbage-disposal containers covered.

9. Leres determined who were undesirable persons who came upon the premises and compelled them to depart; this particularly as to children who otherwise would use the hallway for a playground.

10. Leres supervised entrance and egress from the storerooms, letting tenants in and out of the same, and saying what, when and how things could be stored therein.

11. Leres accepted packages from delivery boys on behalf of tenants who may have been absent, and delivered them (the packages) to the tenants upon their return.

12. Leres had a phone in his apartment; other tenants were not able to have a phone installed, or did not care to do so, and Leres would accept a message for the tenant, and would either relay it to the tenant, or would call the tenant to the phone in Leres apartment.

13. When keys would be lost, Leres would see to it that substitute keys would be had.

14. When Marchetta was in hospital, Leres collected the rent money from tenants on behalf of Marchetta.

The foregoing statements of fact are calculated to indicate that either Mr. or Mrs. Leres occupied a position of trust in so far as Mr. Marchetta is concerned and performed some of the duties of manager of the whole apartment house.

/s/ MRS. B. DAHL,
Tenant.

[Title of District Court and Cause.]

MEMORANDUM OF POINTS AND AUTHORITIES

1. It is not necessary to exhaust administrative procedure when order of administrative body or individual is void.

Aaron v. Pennsylvania Railroad Co., 80 Fed.
2d, 100.

Euclid v. Amber Realty Co., 71 Law Ed. 303.

2. Opinions of administrative bodies and interpretations thereof not binding when clearly against plain explicit language of law or regulations.

Receipt of copy attached.

[Endorsed]: Filed September 29, 1949.

[Title of District Court and Cause.]

SIDNEY FEINBERG,
WILLIAM B. SPOHN,
180 New Montgomery Street,
San Francisco 5, California,
Attorneys for Plaintiff.

JOHN F. O'SULLIVAN,
1500 Central Tower,
San Francisco, California,
Attorney for Defendants.

Erskine, District Judge.

MEMORANDUM OPINION

Plaintiff's action, brought under authority of Section 206 of the Housing and Rent Act of 1947 as amended, is for an injunction against violation of said Act and for restitution to the tenants entitled thereto of all amounts in excess of the lawful maximum rent on the premises involved which have been demanded or received by the defendants.

In answer the defendants allege that from March, 1942, through July 12, 1947, the premises were occupied by one Leres as compensation for services rendered as servant, caretaker, and manager, and therefore were exempt from rent controls by virtue of certain provisions of the Act. In answer to plaintiff's interrogatories, defendants further admit collecting \$65.00 per month rent from January 1, 1948, to and including February, 1949, from Mr. and

Mrs. Merald Hawkins, the tenants occupying the premises at the commencement of the action, but deny that the premises are or ever were under control, because of the said exemption provisions of the statute.

Plaintiff now moves to strike defendants' interrogatories and for summary judgment under Rule 56 of the Federal Rules of Civil Procedure on the ground that there is remaining no genuine issue as to material facts, but that, assuming the facts to be as alleged or admitted by the defendants the only question remaining is one of law. This appears to be the case, and the only question for this court is whether, under the applicable sections of the statute, the premises in question were subject to maximum rental ceilings during the period from January 1, 1948, to and including February, 1949.

Under the terms of the Housing Act of 1947, the term "controlled housing accommodations" does not include any housing accommodations which for any successive 24 month period (between February 1, 1945, and March 31, 1948) were not rented (other than to members of the immediate family of the landlord) as housing accommodations. 50 USCA 1892 (c) (3) (B). In other words, if the apartment was held vacant, occupied by the landlord, or rented only to members of the landlord's immediate family it is not subject to control under the 1947 Act. It should be noted that the statute does not state that any housing accommodations not subject to the maximum rent regulations for two years would be decontrolled.

The statute further provides that "Rent" means the consideration, including any bonus, benefit, or gratuity demanded or received for or in connection with the use or occupancy of housing accommodations. 50 USCA 1892(e).

Section 1(b)(2) of the Rent Regulations issued under the authority of the Housing and Rent Act of 1947 states that the regulations do not apply to "dwelling space occupied by domestic servants, caretakers, managers or other employees to whom the space is provided as part or all of their compensation, and who are employed for the purpose of rendering services in connection with the premises of which the dwelling space is a part." (12 F. R. 4331.) These regulations were not to apply to such service employees' accommodations for the reason that it was expected that such employees would be paying little or no rent, and it was desired to free such accommodations from the other types of regulations such as those pertaining to minimum space, services, furniture, inspection, and registration.

The Housing Administrator has interpreted the statute and the regulations in the following manner: "Where during the two year period housing accommodations were rented under circumstances which caused the renting to be exempt from the rent regulations, the mere fact that such an exemption existed does not result in decontrol. For example, where the housing accommodations were occupied during the two year period by a janitor, the housing

accommodations, so long as this situation existed, were exempt from the rent regulations. If, however, after the expiration of the two year period, the housing accommodations are no longer occupied by a janitor under such an arrangement, but are rented to a tenant under an ordinary rental agreement, the exemption (from the regulations) ceases to apply and the question arises whether they are decontrolled on the basis that they had not been 'rented' during the two year period. Such housing accommodations are not decontrolled on that basis because, even though they were exempt during the two year period, they were rented during that period to a person who was not a member of the landlord's immediate family." It is only the latter class of persons rental to whom will not bar decontrol at the end of the two year period.

Thus, under the Administrator's interpretation, the premises involved herein, though not subject to the rental regulations during the period of the occupancy of the caretaker-manager, were not decontrolled at the end of such occupancy. This interpretation was followed by the District Court of the Southern District of California in the case of *Woods v. Landowne*, No. 9110-W, April 22, 1949, and would appear to be correct. In view of the definition of "rent" in the statute and in the regulations, accommodations occupied by a service employee as part or all of his compensation is "rented" and therefore not decontrolled. Administrative interpretation of regulations is of controlling weight

unless plainly erroneous or inconsistent with the regulations.

Bowles v. Seminole Rock Co., 325 U. S. 410.

Likewise, the regulations being in full accord with the statute, cannot be overturned.

Defendants rely as a defense upon certain statements and advice given by the Office of Housing Administration in March of 1948 to the effect that the premises involved were decontrolled by the Housing and Rent Act of 1947. However, it appears that such representations were made on the basis of a "Decontrol Report for Housing Accommodations" filed by the defendant Barden, which stated that the dwelling unit was "at no time during the period February 1, 1945, to January 31, 1947 . . . rented (other than to members of the immediate family of the occupant [sic]) as housing accommodations." Under the admitted facts, this statement was not true, as a matter of law; consequently the defendant had no right to rely upon any statement by the local Housing Administration officials. Moreover, it is a general rule that an administrative determination does not constitute an estoppel against the United States.

Walker-Hill Co. v. U. S., 162 F. (2d) 259, cert. den. 332 U. S. 771.

In the light of the admitted facts and the above conclusions of law, it is the opinion of the court that the plaintiff's motions to strike the defendants' interrogatories and for summary judgment should

be granted. Decree in accordance with this opinion will be entered.

Dated: October 12th, 1949.

/s/ HERBERT W. ERSKINE,
United States District Judge.

[Endorsed]: Filed October 12, 1949.

United States District Court for the Northern
District of California, Southern Division

No. 28814-E

UNITED STATES OF AMERICA,

Plaintiff,

vs.

F. F. LEITNER, also known as S. F. LEITNER,
also known as FREDERICK LEITNER,
RAPHAEL PORTA, and WILLIAM E.
BARDEN,

Defendants.

JUDGMENT AND DECREE

The above-entitled cause came regularly on for hearing before this Court on the 3rd day of October, 1949, the Honorable Herbert W. Erskine, Judge presiding, on Plaintiff's Motions to Strike Defendant's Interrogatories and for Summary Judgment, Plaintiff appearing by its counsel William B. Spohn, and Defendants by their counsel John F. O'Sullivan; and

The facts having been admitted in the pleadings and the conclusions of law stated in the Memorandum Opinion of the Court dated October 12, 1949,

Wherefore, It Is Ordered, Adjudged and Decreed that the Defendants F. F. Leitner, also known as S. F. Leitner, also known as Frederick Leitner, Raphael Porta, and William E. Barden be and they hereby are required and directed to forthwith make restitution to the Plaintiff on behalf of the tenants Mr. and Mrs. Merald B. Hawkins overcharged by said Defendants for rental of the housing accommodations specified in this cause, the sum of Six Hundred and no/100 Dollars (\$600.00) together with Plaintiff's costs herein in the sum of Forty-three and 24/100 Dollars (\$43.24), said payments to be made to the Treasurer of the United States at the office of the Litigation Section of the Office of the Housing Expediter, San Francisco Regional Office, 180 New Montgomery Street, San Francisco 5, California.

It Is Further Ordered, Adjudged and Decreed that the Defendants F. F. Leitner, also known as S. F. Leitner, also known as Frederick Leitner, Raphael Porta, and William E. Barden, their attorneys, agents, servants, employees and all other persons in active concert or participation with the Defendants, be and they hereby are permanently enjoined and restrained from directly or indirectly demanding or receiving rents in excess of the maximum rents established by any regulation or order

heretofore or hereafter adopted pursuant to the Housing and Rent Act of 1947, as heretofore or hereafter amended, or extended, or superseded, or from engaging in any acts or practices which constitute or will constitute a violation of the said Housing and Rent Act or of any regulation or order adopted pursuant thereto.

Dated this 21st day of December, 1949.

/s/ HERBERT W. ERSKINE,
Judge, U. S. District Court.

Lodged December 8, 1949.

[Endorsed]: Filed December 21, 1949.

Entered in Civil Docket Dec. 22, 1949.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice Is Hereby Given that F. E. Leitner, also known as S. F. Leitner, also known as Frederick Leitner, Raphael Porta, and William E. Barden, defendants above named, hereby appeal to the Court of Appeals for the Ninth Circuit from the decree and judgment entered in this action on the 22nd day of December, 1949, and from the whole of said decree and judgment.

Dated: This 30th day of January, 1949.

/s/ JOHN F. O'SULLIVAN,
Attorney for Defendants
and Appellants.

[Endorsed]: Filed February 2, 1950.

[Title of District Court and Cause.]

DESIGNATION OF CONTENTS OF
RECORD ON APPEAL

To the Clerk of the Above Entitled Court:

Defendants above named hereby designate the following documents as those to be contained in the record on its appeal from the order of Honorable Herbert W. Erskine dismissing the above entitled action and from the judgment of costs entered against defendants in said action, namely:

1. Amended complaint.
2. Answer to amended complaint.
3. Interrogatories to be answered by defendants.
4. Answer to interrogatories.
5. Interrogatories to plaintiff and admissions requested from plaintiff.
6. Motion for summary judgment by plaintiff.
7. Affidavit of Henry A. Cross in support of motion.
8. Affidavit of William E. Barden in opposition for summary judgment, together with exhibits attached thereto.
9. Memorandum Opinion of Court granting motion for summary judgment.
10. Judgment in favor of plaintiff and against defendants.

11. Notice of Appeal.

12. Designation of contents of Record on Appeal.

You Are Hereby Requested to prepare said documents and make the same a part of said record.

Dated: This 30th day of January, 1950.

/s/ JOHN F. O'SULLIVAN,
Attorney for Defendants
and Appellants.

Receipt of copy acknowledged.

[Endorsed]: Filed February 2, 1950.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK TO
RECORD ON APPEAL

I, C. W. Calbreath, Clerk of the District Court of the United States for the Northern District of California, do hereby certify that the foregoing documents, listed below, are the originals filed in this Court, in the above-entitled case, and that they constitute the Record on Appeal herein, as designated by the Appellants, to wit:

First Amended Complaint for Injunction and Restitution, and Exhibit "A."

Answer to First Amended Complaint for Injunction and Restitution.

Plaintiff's Request for Admission and Plaintiff's Interrogatories.

[Endorsed]: No. 12494. United States Court of Appeals for the Ninth Circuit. F. E. Leitner, also known as S. F. Leitner, also known as Frederick Leitner, Raphael Porta and William E. Barden, Appellants, vs. United States of America, Appellee. Transcript of Record. Appeal from the United States District Court for the Northern District of California, Southern Division.

Filed March 8, 1950.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

In the Court of Appeals of the United States
Ninth Circuit

No. 12494

UNITED STATES OF AMERICA,

Plaintiff,

vs.

F. F. LEITNER, also known as S. F. LEITNER,
also known as FREDERICK LEITNER, RA-
PHAEL PORTA, and WILLIAM E. BAR-
DEN,

Defendants.

STATEMENT OF POINTS UPON WHICH DE-
FENDANTS AND APPELLANTS INTEND
TO RELY ON APPEAL.

The appellants, F. F. Leitner also known as S. F. Leitner, Frederick Leitner, Raphael Porta, and

William E. Barden, defendants' in the above entitled action hereby state that the following are the points upon which they intend to rely upon their appeal from the judgment in said action:

I.

That the record in this case shows that there was a genuine issue as to material facts and that the motion for summary judgment should not be granted.

II.

That the record in this case shows that the premises involved were decontrolled and not subject to control for the reason that they were not rented during the period and inclusive of February 1, 1945, to the date of the enactment of the Housing and Rent Act of 1948 to wit, March 30, 1948, both dates inclusive.

III.

That the interrogatories proposed by defendants and ordered stricken by the Court were properly directable to issues of material facts in the case.

Appellants request the whole record be printed.

Dated: This 20th day of March, 1950.

/s/ JOHN F. O'SULLIVAN,

Attorney for Defendants and
Appellants.

Receipt of copy acknowledged.

[Endorsed]: Filed March 22, 1950.

